

**Department of State Health Services
Council Agenda Memo for State Health Services Council
August 28-29, 2013**

Agenda Item Title: New rule concerning reimbursement methodology for the Department of State Health Services Home and Community-Based Services – Adult Mental Health (HCBS–AMH) Program

Agenda Number: 4.c

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background:

The Health and Human Services Commission (HHSC), under its authority and responsibility to administer and implement rates, proposes a reimbursement methodology for a new program being implemented by Department of State Health Services (DSHS). The 2014-15 General Appropriations Act, Senate Bill 1, 83rd Legislature, Regular Session, 2013 (Article II, DSHS, Rider 81) requires DSHS to implement a Home and Community-Based Services – Adult Mental Health (HCBS-AMH) Program for individuals with severe and persistent mental illness who have extended tenure in state mental health facilities.

DSHS and HHSC plan to submit a Medicaid state plan amendment under Sec. 1915(i) of the Social Security Act, as amended by the Affordable Care Act of 2010, which, if approved by the Centers for Medicare and Medicaid Services, would allow the State to obtain federal match to provide HCBS-AMH services to Medicaid eligible clients in this population. Some individuals in the targeted population are not qualified for Medicaid. Services for these individuals will be provided using general revenue funds appropriated for this program.

Summary:

The purpose of the new rule is to provide the reimbursement methodology for the HCBS-AMH Program and establish the rate for the program that is developed based on rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, HHSC will model rates based a pro-forma analysis. A pro-forma analysis makes assumptions about staff salaries and service requirements and estimates the basic types and costs of products and services necessary to deliver services that meet federal and state requirements.

There is no fiscal implication to either costs or revenues of local governments for the first five years the rule is in effect. There is a cost to state government to implement the program.

Key Health Measures:

The proposed rule will provide consistency with other HHSC programs and will clarify the reimbursement methodology for the Home and Community-Based Services – Adult Mental Health program.

Summary of Input from Stakeholder Groups:

The new rule has been distributed to stakeholders for comments via e-mail. The new rule was presented at the Medical Care Advisory Committee meeting on August 8, 2013.

Stakeholders will have another opportunity to comment when the rules are published in the *Texas Register*.

Proposed Motion:

Motion to recommend HHSC approval for publication of proposed rules contained in agenda item **#4.c.**

**Approved by Assistant
Commissioner/Director:**

Pam Robers, Director, HHSC Rate
Analysis, Long Term Services & Support

Date: 7/24/2013

Presenter: Kyle Baxter,
Rate Analyst

Program: HHSC Rate Analysis, Long Term
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Phone No.: 512-730-7450

Approved by CCEA:

Carolyn Bivens

Date: 7/24/2013

Title 1. ADMINISTRATION

Part 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Chapter 355. Reimbursement Rates

Subchapter M. Miscellaneous [Medicaid] Programs

Division 5. Department of State Health Services Home and Community-Based Services – Adult Mental Health

New §355.9070

Proposed Preamble

The Texas Health and Human Services Commission (HHSC) proposes new §355.9070 concerning Reimbursement Methodology for Department of State Health Services (DSHS) Home and Community-Based Services – Adult Mental Health (HCBS–AMH) program and amends the title of Subchapter M of Title 1, Part 15, Chapter 355, Texas Administrative Code.

BACKGROUND AND JUSTIFICATION

HHSC, under its authority and responsibility to administer and implement rates, proposes new §355.9070 to establish a reimbursement methodology for the DSHS HCBS–AMH program. The HCBS–AMH program provides home and community-based services to adults with extended tenure in state psychiatric facilities in lieu of their remaining long-term residents of those facilities.

In September 2010, DSHS created and charged the Continuity of Care Task Force with developing recommendations for resolving barriers to discharging individuals with complex needs from state psychiatric facilities. The task force, which included Local Mental Health Authority leadership, advocates, consumers, law enforcement, judges, inpatient providers and agency staff, conducted public meetings, key informant interviews, meetings with key professional groups and four public forums in various locations of the state and advised that the state consider implementing an a home and community based program. In response to this recommendation, DSHS sought and obtained funding to implement this program through the 2014-15 General Appropriations Act, 83rd Legislature, Regular Session, 2013 (Article II, Department of State Health Services, Rider 81). The rider directs that appropriated funds be used to development a program for adults with complex needs and extended or repeated state inpatient psychiatric stays.

For Medicaid-eligible individuals within the target population, §1915(i) of the Social Security Act could enable Texas to obtain federal matching funds for HCBS–AMH program via a Medicaid State Plan Amendment (SPA) if the amendment were approved by the federal Centers for Medicare and Medicaid Services (CMS). DSHS is currently working to submit such a SPA to CMS.

This proposed new rule describes the reimbursement methodology for the DSHS HCBS–AMH program.

SECTION-BY-SECTION SUMMARY

Because proposed §355.9070 implements a reimbursement methodology for a program that serves both eligible Medicaid recipients and individuals not eligible for Medicaid, the title of Subchapter M of Title 1, Part 15, Chapter 355, Texas Administrative Code, is amended to “Miscellaneous Programs.”

Proposed §355.9070(a) establishes that the payment rates for the DSHS HCBS–AMH program are developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, HHSC will model rates based a pro-forma analysis. A pro-forma analysis makes assumptions about staff salaries and service requirements and estimates the basic types and costs of products and services necessary to deliver services that meet federal and state requirements.

Proposed §355.9070(b) establishes that payment rate development under the DSHS HCBS–AMH program is governed by 1 TAC §355.101 (relating to Introduction) and 1 TAC §355.105(g) (relating to General Reporting and Documentation Requirements, Methods and Procedures).

FISCAL NOTE

Bill Wheeler, Chief Financial Officer for the Department of State Health Services, has determined that, for each year of the first five years the new rule is in effect, there will be a fiscal impact to the state government. The estimated cost to the state government as a result of enforcing and administering the new rule is \$2,655,006 in fiscal year (FY) 2014; \$5,217,413 in FY 2015; \$5,217,413 in FY 2016; \$5,217,413 in FY 2017; and \$5,217,413 in FY 2018. There will be no foreseeable fiscal impact to local governments as a result of enforcing or administering the rule.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Wheeler has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the new rule. The proposed rule does not require any changes in practice or any additional cost to a contracted provider.

PUBLIC BENEFIT AND COSTS

Pam McDonald, Director of Rate Analysis for HHSC, has determined that for each year of the first five years the rule is in effect, the expected public benefit is that the rule will describe the reimbursement methodology used to develop rates for this program.

Bill Wheeler, Chief Financial Officer for DSHS, anticipates that, for each year of the first five years that the amended rules will be in effect, there will not be an economic cost to persons who are required to comply with the new rule.

The new rule will not affect a local economy or local employment.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposed rule does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REGULATORY ANALYSIS

HHSC has determined that this proposed rule is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

PUBLIC COMMENT

Questions about the content of this proposed rule may be directed to Kyle Baxter in the HHSC Rate Analysis Department by telephone at (512) 730-7450. Written comments on the proposal may be submitted to Ms. Baxter by fax to (512) 730-7475; by e-mail to kyle.baxter@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas, 78714-9030, within 30 days of publication of this proposed rule in the *Texas Register*.

STATUTORY AUTHORITY

The new rule and amendment is proposed under Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties under Texas Government Code, Chapter 531; Texas Government Code, §531.0055(e), which authorizes the Executive Commissioner of HHSC to adopt rules for the operation of and provision of health and human services by the health and human services agencies; Texas Human Resources Code, §32.021, and Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code, §531.021(b)(2), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The new rule and amendment implement 2014-15 General Appropriations Act, 83rd Legislature, Regular Session, 2013 (Article II, Department of State Health Services, Rider 81); Texas Government Code, Chapter 531; and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

This agency hereby certifies that the proposed rule has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Legend: (Proposed New Rules)
Regular Print = Proposed new language

§355.9070. Reimbursement Methodology for Home and Community-Based Services – Adult Mental Health Program.

(a) Payment rate determination. Payment rates are developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro-forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(b) Related information. The information in §355.101 of this chapter (relating to Introduction) and §355.105(g) of this chapter applies to this section.